

## **Draft Responses to Comments**

### **Proposed Amendments to the 2009 California Ocean Plan**

#### **Model Monitoring, Vessel Waste Discharge, and Non-Substantive Amendments**

State Water Resources Control Board

## APPENDIX D – Staff Response to Comments

### Comment Letters Received by noon on October 24, 2011

<b>Letter No.</b>	<b>Association</b>	<b>Representative</b>
1	California Department of Transportation	Scott McGowen
2	California State Lands Commission	Lynn Takata
3	California Stormwater Quality Association	Scott Taylor
4	Calleguas Municipal Water District	Susan Mulligan
5	Center for Biological Diversity	Miyoko Sakashita
6	Central Coast Regional Water Quality Control Board	Lisa McCann
7	City of Santa Barbara	Cameron Benson
8	City of San Diego	Kris McFadden
9	City of Seaside	Sydney Moe
10	County of Los Angeles Department of Public Works, Los Angeles County Flood Control District	Gary Hildebrand
11	County of Marin	Terri Fashing
12	County of Santa Barbara Public Works Department	Joy Hufschmid
13	County of Santa Cruz	John Ricker
14	Department of Defense	C.L. Stathos
15	General Public	Joyce Dillard
16	General Public	Teresa Jordan
17	Heal the Bay	Kirsten James, Mark Gold

## APPENDIX D – Staff Response to Comments

Comment Letters Received by noon on October 24, 2011

Letter No.	Association	Representative
18	North San Mateo County Sanitation District	Patrick Sweetland
19	Monterey Regional Storm Water Permit Participants Group	Sydney Moe
20	Orange County Sanitation District	James Colston
21	Pacific Merchant Shipping Association	John Berge
22	Sanitation Districts of Los Angeles County	Philip Friess
23	South Orange County Wastewater Authority	Brennon Flahive
24	U.S Department of Commerce, National Oceanic and Atmospheric Administration	William Douros

### Comments and Responses

#### Letter 1: From Scott McGowen of the California Department of Transportation (DOT)

##### Comment 1.1

The proposed monitoring amendments will significantly increase effluent and receiving water monitoring and will place MS4 permittees in jeopardy of not complying with their NPDES permits based on recent court interpretations of MS4 permit provisions.

##### Response 1.1

Staff agrees that monitoring will increase, especially for storm water dischargers. The Ocean Plan does not currently describe monitoring for storm water and nonpoint source discharges to the ocean. The monitoring amendment is meant to be a framework for monitoring requirements across the state, which will provide consistent monitoring and data amongst dischargers. The framework will also help guide the Regional Boards when writing permits and therefore should not jeopardize dischargers with non-compliance.

Ultimately, dischargers are already required to meet water quality objectives. It is not acceptable to staff that the absence of monitoring should be used as a means to avoid knowing if objectives are being met.

## APPENDIX D – Staff Response to Comments

### **Comment 1.2**

DOT would like the Water Boards to modify existing MS4 permits to remove the prohibition against violating water quality standards.

### **Response 1.2**

Staff does not agree that dischargers should be exempt from violations of water quality standards. These standards have the purpose of protecting beneficial uses of California's coastal waters. No discharger must be allowed to violate standards under state and federal law.

### **Comment 1.3**

Monitoring questions are believed to have little relationship with the proposed monitoring program.

### **Response 1.3**

Staff disagrees. Many of the proposed monitoring questions and monitoring requirements were based on the objectives and beneficial uses in the Ocean Plan. However, staff agrees that certain questions should be removed or edited to make the questions relevant to the proposed monitoring requirements, as several questions are answered through regional monitoring rather than core monitoring.

### **Comment 1.4**

In regard to the monitoring requirements, a table was included with inconsistencies in the policy.

### **Response 1.4**

Staff appreciates the table provided by Caltrans. Regarding bacteria monitoring, it is intended to be in receiving water. With regard to bioaccumulation the location and size of outfalls is not specified, purposely because the bioaccumulation monitoring program is intended to measure conditions at a representative location and not at all discharges. With regard to receiving water characteristics, the intention was for the requirement to apply to outfalls 36 inches or greater in diameter or width.

### **Comment 1.5**

The draft policy should be revised to prioritize and limit the initial monitoring effort to receiving water monitoring only.

### **Response 1.5**

Staff has considered this suggestion. We have revised the proposed amendment to specify monitoring of receiving water for the effects of storm water runoff, rather than sampling and analyzing the runoff itself.

### **Comment 1.6**

The cost estimate does not include the labor for mobilizing crews, collecting the samples, and compiling the data.

## APPENDIX D – Staff Response to Comments

### Response 1.6

Staff based the cost estimate on the best available information from monitoring programs such as those conducted by the Southern California Coastal Research Project (SCCWRP), and the State Water Board's Mussel Watch and Surface Water Ambient Monitoring Programs (SWAMP).

### Comment 1.7

The monitoring program goes far beyond what is necessary for NPDES compliance for MS4 permits. There is inconsistency with other California MS4 monitoring, including the small MS4 permit – it requires a more intensive ocean monitoring program - particularly for pollutants not of concern - in contrast to monitoring requirements for inland waters, including bays and estuaries.

### Response 1.7

Many current storm water monitoring programs do not adequately address receiving water quality and beneficial uses in ocean waters. One intention of the model monitoring amendment is to provide information to better understand the effect of storm water on the marine environment. Water Code section 13383.5 clearly requires the development of monitoring programs for storm water discharges, stating that the State Water Board “shall develop minimum monitoring requirements for each regulated municipality and minimum standard monitoring requirements for regulated industries.” The proposed monitoring questions and requirements were based on the objectives and beneficial uses in the Ocean Plan.

### Comment 1.8

The Ocean Plan amendments should be revised to clarify that the monitoring conducted for discharge permits and the Ocean Plan can also be submitted to meet the requirements of the Marine Life Protection Act, in order to maximize the use and efficiency of limited financial resources.

### Response 1.8

The Marine Life Protection Act (MLPA) does not require water quality monitoring. The State Water Board does not administer the MLPA; it operates pursuant to the Porter-Cologne Water Quality Control Act and the Clean Water Act. However, the State Water Board is working with the assistance of the Marine Life Protection Act Monitoring Enterprise to make best use of available resources, such as encouraging dischargers to support regional monitoring.

### Comment 1.9

Clarify that stream crossings of any type (i.e. bridges, culverts, etc.) are not defined as outfalls in the monitoring requirements of the Ocean Plan.

### Response 1.9

Similar to the approach used in the ASBS Special Protection, if a discharge is reasonably close and discharging into the stream, monitoring may be required under the

## **APPENDIX D – Staff Response to Comments**

proposed monitoring requirements in the Ocean Plan. However, additional monitoring would not be required if monitoring is already being conducted for the implementation of a Basin Plan or the California Toxics Rule.

### **Comment 1.10**

The DOT requests that effluent monitoring be eliminated unless necessary to support TMDL implementation. Storm water monitoring should be based on pollutants of concern and site-specific needs.

### **Response 1.10**

Staff has clarified that receiving water, not effluent, will be monitored. Staff disagrees that monitoring should be limited to pollutants of concern and site-specific needs, as the constituents to be monitored are relevant to the Ocean Plan requirements.

## **Letter 2: From Lynn Takata of the California State Lands Commission**

### **Comment 2.1**

There is no indication in the text whether or not the Water Board intends to apply model monitoring requirements to vessels. It is strongly encouraged the Water Board to work closely with the regulated industry to better understand the nature of vessel discharges and the potential difficulties in monitoring a mobile point source.

### **Response 2.1**

Staff does not intend to apply the proposed model monitoring requirements to vessels. These monitoring amendments are designed to address land based sources. The intent of the proposed amendment regarding vessel discharge is to align the Ocean Plan with existing state and federal laws, regulations and permits for vessel discharge. It is staff's position that when operating under a permit such as the US EPA Vessel General Permit (VGP), monitoring should be performed by the discharger to determine the effects of the discharge on receiving water quality. However, vessel discharge monitoring is different from land base source monitoring and would require different approaches than what is being proposed in the current monitoring amendment.

### **Comment 2.2**

Pg 6, bottom of page, Remove the word "Private" from the definition of an oceangoing vessel.

### **Response 2.2**

Staff agrees and will remove the word "private" from the definition. Staff will also edit the definition to make sure that active military vessels are excluded.

### **Comment 2.3**

Page 54, Section 3.2.2, paragraph 4: The paragraph should make reference to the relationship between the initial legislation and the currently applicable Marine Invasive Species Act.

## **APPENDIX D – Staff Response to Comments**

### **Response 2.3**

Staff appreciates the comment and will add the initial legislation California's Ballast Water Management for Control of Nonindigenous Species Act, 1999.

### **Comment 2.4**

Page 55, Section 3.2.2.1: The definition of "Vessel" should be amended to be defined as a vessel of 300 gross registered tons or more.

### **Response 2.4**

Staff agrees and has already included this as part of the definition of "oceangoing vessels" in Appendix I. Staff will also make changes to the draft SED, Section 3.2.2.1, to better reflect the definition in the text.

### **Comment 2.5**

Page 61, Section K: Add "and Title 2 California Code of Regulations Section 2270 et seq." to end of statement.

### **Response 2.5**

Staff agrees and will make changes to Section K language.

## **Letter 3: From Scott Taylor of the California Stormwater Quality Association**

### **Comment 3.1**

The proposed Model Monitoring amendments should be withdrawn. The State Board should instead convene an expert panel to review monitoring requirements statewide, and recommend a coherent, integrated approach to efficiently address the various needs for water quality monitoring in California.

### **Response 3.1**

The proposed monitoring requirements were derived from years of stakeholder meetings and public input. The proposed amendment is designed to create consistency in monitoring by coastal dischargers throughout the state and to allow flexibility for addressing specific water quality monitoring needs. The approach in the proposed amendment is based on the model monitoring work conducted by SCCWRP along with the storm water monitoring coalition in southern California.

### **Comment 3.2**

Proposed Amendments duplicate existing requirements and add confusion to an already-complex regulatory matrix. The level of technical difficulty is very high.

### **Response 3.2**

The proposed requirements are not duplicative; There were no pre-existing requirements for storm water and non point sources in the Ocean Plan. The Water

## **APPENDIX D – Staff Response to Comments**

Boards implement the requirements of water quality control plans, including the Ocean Plan, when developing permits. The proposed monitoring requirements are intended to provide a framework for Regional Water Board staff when writing monitoring requirements in permits that cover ocean discharges.

### **Comment 3.3**

The proposed monitoring amendment would increase costs without clear benefit.

### **Response 3.3**

The benefit of monitoring ocean discharges is to understand what is being discharged to California's ocean waters and to determine if the discharges are impacting beneficial uses. The proposed monitoring requirements encourage dischargers to participate in regional monitoring programs, which is more cost effective and informative than an individual monitoring program.

### **Comment 3.4**

Questions are too broad and should be locally focused and directed, and they should be answered sequentially within NPDES Permit context. A reasonable potential analysis (RPA) should be used.

### **Response 3.4**

The monitoring questions are relative to ocean waters and are intended to provide consistency statewide for ocean monitoring programs and results. The monitoring and reporting programs (MRP) of NPDES permits will be used to implement the Ocean Plan monitoring requirements.

The allowance for regional monitoring programs does promote local focus through collaboration with other dischargers within a region. The Ocean Plan already allows for an RPA.

### **Comment 3.5**

Provisions are lacking for data analysis, interpretation, and use.

### **Response 3.5**

As with any NPDES permit MRP, the data will be provided to the permitting authority. The permitting authority (e.g., the Regional Board) may require the discharger to perform further data assessment, or may choose to perform that data assessment itself. In cases where regional monitoring programs are employed, data assessment is usually a part of those programs.

## **Letter 4: From Susan Mulligan of the Calleguas Municipal Water District**

### **Comment 4.1**

Proposed amendments duplicate existing regulatory requirements. Appendix III of the Ocean Plan includes standard monitoring procedures that currently provide flexibility



## **APPENDIX D – Staff Response to Comments**

and allow the Regional Water Boards to effectively address regional water quality issues.

### **Response 4.1**

It is staff's position that the current Appendix III monitoring provisions are not adequate in providing statewide consistency in monitoring and understanding the effects of discharges on the marine environment statewide. Also, please see Response 3.2.

### **Comment 4.2**

The proposed Model Monitoring amendments should be withdrawn, and that State Water Board staff should instead produce non-regulatory guidance for the Regional Water Boards and dischargers. If the amendments continue to be proposed, we urge the State Water Board to include only minimum monitoring requirements in statewide policies such as the Ocean Plan since the Regional Water Boards already have authority to require additional monitoring through NPDES permit provisions, TMDL Implementation Plans, and other regulatory mechanisms.

### **Response 4.2**

The Regional Boards must implement Basin Plans and Statewide Water Quality Control Plans through NPDES permits. The proposed monitoring amendments are considered minimum monitoring requirements to allow for statewide consistency and to better understand the effects of discharges on the marine environment. Regional Boards may require additional monitoring as appropriate.

### **Comment 4.3**

The proposed Model Monitoring imposes significant cost burdens without a clear environmental benefit. Increased frequency of ocean monitoring for bacteria is costly and unnecessary. Requirements for individual monitoring programs are unreasonable.

### **Response 4.3**

Please see Response 3.3.

Indicator bacteria impairments are unfortunately very commonplace on our beaches. Contact recreation at marine beaches is a major part of the California lifestyle and is also a major tourism draw. Bacteria monitoring is necessary in order to preserve and protect these uses, which are so important to our state's economy as well as public health.

### **Comment 4.4**

Many of the proposed monitoring requirements are confusing and need clarification.

### **Response 4.4**

Staff disagrees and has attempted to address all specific questions and comments on the draft amendments and how they would apply.. Unless specific areas are requested for clarification, staff is unable to assist in explaining the amendment.

## APPENDIX D – Staff Response to Comments

### Letter 5: From Miyoko Sakashita of the Center for Biological Diversity

#### Comment 5.1

The Center for Biological Diversity supports the Model Monitoring amendment, but requests that monitoring for ocean acidification, plastic pollution, coastal marine debris data, and microplastics also be included

#### Response 5.1

The support is appreciated. The State Board is currently working on a draft statewide trash policy that will address trash, plastic waste pollution, and pre-production plastic. The State Board is also currently working with the Southern California Coastal Water Research Project (SCCWRP) to collect coastal marine debris and plastic pellet data. State Water Board staff is currently working with the ocean observing systems to monitor ocean acidification.

### Letter 6: From Lisa McCann of the Central Coast Regional Water Quality Control Board – answered internally through correspondence with Regional Board

[Monitoring Comment Letter 6 RB](#)

### Letter 7: From Cameron Benson of the City of Santa Barbara

#### Comment 7.1

The City supports the question-driven approach of the Model Monitoring Amendment, especially the questions regarding Storm Water discharges and is also supportive of the inclusion of pyrethroid pesticides in the list of chemical concerns.

#### Response 7.1

Staff appreciates the city's support of the question-driven approach and inclusion of pyrethroid pesticides as a constituent of concern.

#### Comment 7.2

There is a question if the Model Monitoring requirements for storm water would result in a dataset that will answer the questions posed, and the City feels that peer review is essential to creating a Model Monitoring Program that will have a chance at answering the questions posed.

#### Response 7.2

The model monitoring amendment is not intended as a target, objective, or regulatory level. Instead it is simply a framework for designing an ocean monitoring program, to be implemented in an MRP of a permit. It is based on the work and reports performed by SCCWRP on model monitoring. It does not need to be peer reviewed, and in fact there are no aspects of the amendment that lend it to peer review within the meaning of

## APPENDIX D – Staff Response to Comments

Health and Safety Code section 57004, which directs peer review of the scientific basis of a rule, defined as the “foundations of a rule that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the protection of public health or the environment.” However, the actual design and eventual results of the regional monitoring programs, when implemented, would benefit from scientific review, but that would be the purview of the regional monitoring cooperatives.

### **Comment 7.3**

Sediment objectives are clearly missing from the Proposed Amendment and if included would trigger the need for peer review.

### **Response 7.3**

The Ocean Plan already has existing narrative objectives for sediment quality as follows: “The dissolved sulfide concentration of waters in and near sediments shall not be significantly increased above that present under natural conditions. The concentration of substances set forth in Chapter II, Table B, in marine sediments shall not be increased to levels which would degrade indigenous biota. The concentration of organic materials in marine sediments shall not be increased to levels that would degrade marine life. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded.” The proposed amendment will not add any new objectives.

### **Comment 7.4**

It is unclear whether creek, stream, or river outlets are included in the definition of “outfall.”

### **Response 7.4**

Creek, streams, and rivers are not discharges to be regulated and are not addressed in the proposed amendment. Presently, Staff is only addressing direct wastewater, storm water, and nonpoint source discharges (which include agriculture and golf courses only). Discharges to streams, and therefore stream water quality, are regulated under the applicable Basin Plan.

### **Comment 7.5**

It is unclear how the bacteria sampling recommended for storm water discharges (wet and dry weather) relate to AB411 requirements.

### **Response 7.5**

Discharges must not cause a violation in receiving water at beaches of the Ocean Plan bacterial objectives, which are essentially the same as the AB411 requirements (see, Health and Safety Code section 115875 et. seq.). Dischargers are responsible for assuring through monitoring that the objectives are met.

### **Comment 7.6**

## APPENDIX D – Staff Response to Comments

The proposed amendment does not appear consistent with the Workplan derived in the Triennial Review.

### **Response 7.6**

Staff disagrees and views the proposed amendment as consistent with the Triennial Review Workplan, which directs staff to work on consistent monitoring approaches, including monitoring for ecosystem (ambient water quality) effects and regional approaches.

### **Comment 7.7**

For Indicator Bacteria wet weather sampling (4.2), sampling three storms per year will not provide answers or even insight to Question 3, 4, 5, or 6. Furthermore, sufficient data has already been collected throughout California to conclude that the vast majority of storm water runoff, and the associated receiving water, exceeds recreation contact and shellfish standards during storm events (Question 1 and 2). The most important outstanding questions about indicator bacteria in storm event runoff are: what is the source of the indicator bacteria (Question 5) and/or are there associated health risks. There has not been an epidemiological study or large source tracking study on wet weather recreational exposure in California, i.e. for surfers, and it is important to do so. None of the proposed sampling answers Question 5.

### **Response 7.7**

Wet weather sampling will answer question 1, “Does the receiving water comply with water quality standards?” We agree that storm water and impacted receiving water generally do not meet contact recreation and shellfish standards. However, we need to know if conditions in the receiving water are getting better or worse (question 3, was previously question 4), so that we can adaptively manage storm water. We agree that the question about bacterial sources is important, but that question was removed because it is not directly related to the proposed core monitoring. However, that question can be addressed through a properly designed regional monitoring program or a special study.

### **Comment 7.8**

For dry weather indicator bacteria sampling, changing the sampling requirement to “point zero” will result in a resetting of our clock for monitoring long term changes (4.2, question 4). Many agencies have over fifteen years of beach indicator bacteria data and can start to see trends in space and time. Starting anew will not help answer the questions posed. This requirement appears to be a roundabout way to increase the protectiveness of the AB411 sampling, which may be a valuable goal, but not one that is stated for the proposed amendment.

### **Response 7.8**

Point zero sampling will inform us all about the worst case in terms of compliance with receiving water quality objectives. This amendment is not intended to regulate AB 411 sampling by local agencies. It is intended to require better characterization of storm water discharges under NPDES permits. However, the amendment does allow

## APPENDIX D – Staff Response to Comments

compliance through participation in a regional monitoring program in conjunction with local health agencies, at the discretion of the Regional Boards.

### **Comment 7.9**

For long term monitoring, in an era in which hydromodification is a key concern of the General Permit, it would seem necessary to monitor load (flow x concentration), rather than just concentration, of indicator bacteria. In many cases, reduced flow will result in a reduced load to the ocean, but concentrations at point zero will remain consistent due to microbial ecology in storm drains. For Chemical Constituents in Storm Water (5.2), it is unclear where the sampling is to take place.

### **Response 7.9**

Again, this amendment is intended to guide monitoring for compliance under storm water NPDES permits. An important question is regarding compliance with indicator bacterial standards. While we agree that reduced flow will also generally reduce bacterial loading, the Ocean Plan still requires that the indicator bacterial concentration be met.

Staff agrees that it is unclear where sampling for chemical constituents in storm water is to occur. It has been suggested by other commenters that the sampling take place in the receiving water. Staff agrees with this suggestion and has made changes to the proposed amendment accordingly.

### **Comment 7.10**

For Section 5.2, the questions are valuable, but they will not be answerable with the dataset to be generated in the proposed amendment. There is no guidance about when during a storm, or when during a season, the sampling is to take place. The variability in chemical concentrations among storms and during individual storms is greater than we can expect to see over decades of looking for a trend in randomly collected storm samples.

### **Response 7.10**

The proposed monitoring for storm water chemical constituents will answer whether receiving water quality is in compliance with standards at the times when sampling takes place. Of course while more sampling will result in a better understanding of compliance on a temporal basis, more sampling also will increase costs substantially. An allowable option in the proposed amendment is the use of a regional monitoring approach, which may better answer questions about water quality trends.

### **Comment 7.11**

In section 5.2, question #3 would require greater spatial and temporal sampling to solve.

### **Response 7.11**

Question 3 from the previous draft has been removed, due to the fact that the core monitoring would not adequately answer the question. However, staff believes that the

## APPENDIX D – Staff Response to Comments

question of the extent and magnitude of receiving water problems could be answered through a regional monitoring program, which staff encourages.

### **Comment 7.12**

In section 5.2, question 4 regarding loading will be unanswerable without flow data being collected.

### **Response 7.12**

We are not intending to require flow measurements or estimates on storm water runoff as part of core monitoring. The text in the question about contributions to “pollutant loading” in the receiving water has now been changed to “pollution.” Pollutant loading is an important question but that may be better answered through a regional monitoring approach or a special study.

### **Comment 7.13**

In section 5.2, none of the sampling addresses question 5 about the sources of runoff pollution.

### **Response 7.13**

Staff agrees that question 5 cannot be answered by the core monitoring requirements, however, feels that this question may be better answered through a regional monitoring approach. The proposed Appendix III has been modified to reflect this. Also see Response 1.3.

### **Comment 7.14**

In Section 6.2, Sediment Monitoring for Storm Water, it is unclear where the sediment samples are to be collected. It is also very unclear how occasional (permit cycle) sediment collection will answer question 1. For question 2 and 3, there is no guidance put forth for assessing chemical constituent levels. If objectives were put in place, much more peer review would be required, and that would be a very beneficial outcome. The Water Board and its stakeholders worked tirelessly on the Sediment Quality Objectives for Enclosed Bays and Estuaries, and that guidance should be put to use in the this document.

### **Response 7.14**

We have proposed changes to the amendment to state that sediment monitoring would occur in low energy environments where deposition is likely, and only for very large drains greater than 72 inches. Regarding guidance on assessing chemical levels, the Ocean Plan does not now include sediment quality objectives tools and thresholds. The Sediment Quality Objectives (SQOs) for enclosed bays and estuaries were developed by the same unit (Ocean Standards Unit) at the State Water Board that is responsible for the current Ocean Plan amendments. Staff would eventually like to propose an amendment to the Ocean Plan similar to the SQOs, but for now we want to initiate monitoring so that we will have better information in the future on which to base those later amendments.



## **APPENDIX D – Staff Response to Comments**

### **Comment 7.15**

For section 7.2, Aquatic Life Toxicity, question 1 is de facto unanswerable because the Water Board is in the middle of a process to update how toxicity tests are evaluated. If the Water Board is going through a lengthy, peer-reviewed process, should that knowledge not be put to use in the proposed amendment?

### **Response 7.15**

The Toxicity Policy that the commenter refers to is for inland waters and enclosed bays. The Ocean Plan currently has toxicity requirements and the amendment does not include changes to the program of implementation for toxicity.

## **Letter 8: From Kris McFadden of the City of San Diego**

### **Comment 8.1**

The City of San Diego is concerned that available data were not analyzed sufficiently to justify such an extensive and costly effort outside of the ASBS, and the release of this amendment was premature.

### **Response 8.1**

The Ocean Plan regulates water quality in the entire near coastal ocean, not only ASBS. Waste discharges are not prohibited outside of ASBS if such discharges will not alter natural water quality in an ASBS. However, although discharges are allowed in non-ASBS areas, water quality objectives must still be met. Staff has been working with stakeholders for an extensive period of time on this amendment and disagrees that the amendment is premature.

### **Comment 8.2**

Sample locations should always be collected at a point where marine species can tolerate the receiving water salinity.

### **Response 8.2**

Marine species have varied tolerances to salinity changes, but generally are adapted to salinities that range from brackish to marine (i.e. approximately 33 ppt). Discharges such as wastewater and storm water are typically very low in salinity, similar to fresh water. For wastewater rapid mixing is encouraged and a zone of initial dilution is allowed. Since storm water discharges are not given effluent limits the zone of initial dilution (i.e. a dilution factor) is not relevant. Sample locations for storm water toxicity should represent worst case conditions, but the laboratory toxicity testing procedures account for the adjustment of salinity so that low salinity is not a cause for mortality or effect.

### **Comment 8.3**

The City does not agree that initial survey of all discharges to receiving water is important.

## **APPENDIX D – Staff Response to Comments**

### **Response 8.3**

Dischargers have a responsibility to assure that their discharges do not cause a violation of receiving water objectives. Monitoring of discharges of substantial size is necessary to determine if objectives are met. However, the amendment does not require all discharges to be monitored for all constituents. For example, Phase I MS4 discharges need only monitor 10% of discharges exceeding 36 inches in diameter for chemistry and toxicity. Staff contends that this will be a representative survey of large discharges (50%) during a permit cycle.

### **Comment 8.4**

The Draft Ocean Plan Amendment may constitute an unfunded mandate that will require the State to reimburse the City and other municipalities to comply the requirements.

### **Response 8.4**

The Ocean Plan is the federally approved water quality control plan for the State's ocean waters under the Clean Water Act. The objectives in the Ocean Plan must currently be met by all dischargers (wastewater, storm water and nonpoint sources.) The amendment simply sets forth minimum and consistent question driven monitoring requirements. These model monitoring amendments do not constitute an unfunded local government mandate subject to subvention under Article XIII B, Section (6) of the California Constitution, for several reasons, including, but not limited to, the following: local agency obligations are similar to the obligations of non-governmental dischargers who would be subject to the same monitoring requirements. Further, local agencies subject to discharge permits who would incur costs associated with monitoring requirements have the authority to levy service charges, fees, or assessments sufficient to pay for any new monitoring. The State Water Board is not required to reimburse dischargers for their self-monitoring programs required by permits.

## **Letter 9: From Sydney Moe of the City of Seaside**

### **Comment 9.1**

Cost of monitoring should not be placed upon coastal discharges only; cost of research and monitoring should be spread upon all of the state. The amendment is an unfunded State mandate, and monitoring should either be funded or conducted by the State. The State Water Board should conduct a thorough unfunded mandates review of all proposed amendments and publish the findings for public review.

### **Response 9.1**

Please see Response 8.4. Dischargers are responsible under both state and federal law to monitor the effects of their discharges on the marine environment.



## APPENDIX D – Staff Response to Comments

### Comment 9.2

The cost estimate in the Staff report does not include additional projected costs, such as preparing a monitoring plan or special studies.

### Response 9.2

The proposed amendment does not involve any new objectives or regulatory levels, and is not required to have an analysis of costs. Nevertheless, while not required, staff wanted to provide some costs estimates for comparative purposes. Staff agrees that costs of preparing a monitoring plan or special studies were not considered in the projected cost, since those costs are extremely difficult to estimate. Instead staff focused on the costs of performing the monitoring, for which it had reliable figures.

### Comment 9.3

The State Water Board has not presented evidence indicating a reasonable relationship to the need for and the benefits of monitoring.

### Response 9.3

Discharger self-monitoring is a long-standing, legally required approach to monitoring for the effects of discharges on receiving water. Any party discharging waste to the ocean is legally required to monitor in order to assure that objectives are met.

## Letter 10: From Gary Hildebrand of the County of Los Angeles Department of Public Works

### Comment 10.1

The proposed Model Monitoring guidance should be adaptive and take into account other regulatory mechanisms.

### Response 10.1

Staff believes that the proposed amendment allows for adaptation. For example, there are proposed provisions that allow for a reduction in monitoring under certain circumstances. If the commenter means by “other regulatory mechanisms” the imposition of controls on storm water discharges, then staff agrees that a reduction of monitoring may be considered in situations where proven structural controls are employed.

### Comment 10.2

The amendment would require extensive core monitoring to assess compliance with individual effluent limits unless it is waived by a Regional Water Board in favor of a regional monitoring program.

### Response 10.2

The amendment would not institute effluent limits of storm water. Staff will edit the amendment to clearly state that sampling shall occur in the receiving water rather than

## APPENDIX D – Staff Response to Comments

the runoff (i.e. effluent). The proposed amendment encourages regional monitoring, which is more adaptive and economically manageable.

### **Comment 10.3**

The proposed core monitoring is excessive and should be more targeted, limited only to priority constituents and areas of concern.

### **Response 10.3**

The amendment is already designed to address the constituents of concern for storm water using staff's best judgment. Regarding prioritizing areas of near coastal ocean water, objectives must be met everywhere in near coastal ocean waters. However, only those areas with large discharges (>36") are targeted for monitoring.

### **Comment 10.4**

Storm water monitoring locations should be sited in the receiving water taking into consideration dilution factors.

### **Response 10.4**

Staff agrees that monitoring locations should be specified in the receiving water. Storm water discharges are not given effluent limits and therefore a zone of initial dilution and a dilution factor are not allowed. Sample location for storm water should be at a location of worst-case effect close to the outfall.

### **Comment 10.5**

Indicator bacteria monitoring should be limited to *Enterococcus*.

### **Response 10.5**

Staff agrees that *Enterococcus* is the best indicator for marine contact recreation water quality. However since AB 411 ( See, Health and Safety Code section 115875 et. seq.) and the Ocean Plan currently also require testing for coliform bacteria, and since we are not now changing the indicator bacteria objectives, the amendment may not specify *Enterococcus*. Still, the amendment generally refers to indicator bacteria. If the objectives are changed in the future, the monitoring appendix will not require changing at that time, since it does not refer to the specific bacterial group to be tested.

### **Comment 10.6**

"Core Runoff Monitoring" should be replaced with "Core Monitoring" for consistency.

### **Response 10.6**

Staff generally agrees that runoff will not be monitored and that instead, receiving water at the point of discharge should be monitored. Staff will edit the amendment.

## **Letter 11: From Terri Fashing of the County of Marin**

## APPENDIX D – Staff Response to Comments

### **Comment 11.1**

Marin County supports CASQA's comments and requests that the amendments be withdrawn.

### **Response 11.1**

Please see Response 3.1.

### **Comment 11.2**

The County does not agree that there is a need for the Ocean Plan to specify end of pipe monitoring, only ambient monitoring.

### **Response 11.2**

Please see Response 10.6.

### **Comment 11.3**

Specific monitoring requirements in a statewide plan cannot specifically address local and regional WQ issues, and should instead be provided/defined within NPDES permits.

### **Response 11.3**

The proposed amendment is to provide a framework for monitoring requirements in permits, such as NPDES permits. By law, NPDES permits implement water quality control plans such as the Ocean Plan.

### **Comment 11.4**

The County recommends amending the COP to identify a statewide ocean monitoring program for coastal receiving waters, analogous to SWAMP for freshwater receiving waters.

### **Response 11.4**

SWAMP is the state's ambient monitoring program for all surface waters, including the ocean. While historically much of the SWAMP program has focused on fresh water, it has also provided ambient monitoring for embayments and ocean waters. Still, the SWAMP does not replace the need for discharger self-monitoring.

### **Comment 11.5**

The County recommends that the amendment language include a reference to Title 40, Code of Federal Regulations, Chapter 1, Part 122.2 and Part 122.26 (40 CFR) in order to define the terms "point source" and "outfall."

### **Response 11.5**

Staff agrees that language should include reference to Title 40, Code of Federal Regulations, Chapter 1, Part 122.2 in order to define "point source", and has made edits to the proposed language accordingly. Because "outfall" is defined within Part 122.26 specific to storm water discharges, staff does not propose using the narrower definition.

## APPENDIX D – Staff Response to Comments

### Comment 11.6

The County recommends that language be added to Sect. 4.3 and 5.3 to clarify that storm water runoff from agricultural and golf course land uses are subject to core "non-point source" monitoring.

### Response 11.6

Section 4.3 already states that the receiving water (where the runoff meets the ocean) is subject to core monitoring unless the Regional Board allows a regional monitoring approach. Section 5.3 has been changed to state that the core monitoring for storm and dry weather runoff are in the receiving water.

## Letter 12: Joy Hufschmid of the County of Santa Barbara Public Works Department

### Comment 12.1

The County supports CASQA's comments, and believe the amendments would detract from the practice of developing monitoring to address particular environmental circumstances.

### Response 12.1

Please see Response 3.1.

### Comment 12.2

Requirements are duplicative of NPDES permit provisions and TMDL requirements and overlap with other regulations.

### Response 12.2

Please see Response 11.3. TMDLs are incorporated into Basin Plans and must also be implemented by permits. Staff disagrees that the amendment is duplicative. Instead, it is designed to provide consistent monitoring for ocean waters based on questions relative to effectively meeting the Ocean Plan objectives.

### Comment 12.3

There is a need for a coherent and integrated approach that considers NPDES permits, TMDLS, AB411.

### Response 12.3

Please see Responses 7.5, 11.3 and 12.2.

### Comment 12.4

The County is concerned that the increased cost is without water quality benefit, due to feasibility of answering proposed questions and technical challenges in coastal monitoring and storm water quality data. It is an increased regulatory burden on regulated community and regulatory agencies.

## APPENDIX D – Staff Response to Comments

### Response 12.4

Please see Responses 3.3, 4.3 and 9.4.

## Letter 13: John Ricker of the County of Santa Cruz

### Comment 13.1

The proposed program is not locally derived, technically feasible, nor supported with equitable funding mechanism.

### Response 13.1

The amendment is to the Ocean Plan, a statewide water quality control plan, and is intended to provide consistent statewide monitoring of ocean waters. It is not intended to be locally derived. However, it does provide several options for regional monitoring, which would in turn provide for local decisions on monitoring programs.

Discharger self-monitoring is the long-standing, legally required approach to monitoring for the effects of discharges on receiving water. Any party discharging waste to the ocean is legally required to monitor to assure compliance with permit limitations and to assure that objectives are met. The state is not obligated to fund dischargers for monitoring.

### Comment 13.2

Toxicity testing is particularly problematic for storm water discharges, because it is technically infeasible to accurately quantify the effects of a short-lived, transient input (storm water runoff) in the course of a multi-day toxicity test procedure.

### Response 13.2

Storms and storm water discharges can last several days and therefore do not always represent transient inputs. Storm water discharges have been known to be toxic to marine life and therefore should be monitored for toxicity.

### Comment 13.3

The proposed monitoring requirements constitute an unfunded mandate and the costs to perform the monitoring should either be reimbursed by the State or the State should conduct the monitoring themselves. It is not reasonable to burden just the coastal discharger with receiving water monitoring responsibility.

### Response 13.3

Please see Responses 8.4 and 9.1.

### Comment 13.4

The near-shore ocean environment is an extremely complex system with numerous stressors acting upon it. Attempting to tease out impacts from the various inputs is a

## **APPENDIX D – Staff Response to Comments**

nearly impossible task, and one that has the potential to consume vast resources with no discernable benefit.

### **Response 13.4**

Staff agrees about the complexity of the near-shore ocean environment. The proposed amendment was designed to provide minimum and consistent monitoring related to ocean discharges. Monitoring of discharges using the proposed question driven approach provides information on whether or not objectives are being met. The proposed amendments are not open ended and will not result in consuming vast resources.

## **Letter 14: From C.L. Stathos of the Department of Defense (DOD)**

### **Comment 14.1**

The DOD suggests adding a low threat category for discharges less than 100,000 gallons per day.

### **Response 14.1**

Staff agrees with this approach and will edit the amendment to allow a low threat category.

### **Comment 14.2**

The economic cost estimates should be recalculated to reflect the true costs of all of the proposed monitoring requirements.

### **Response 14.2**

Staff has edited the costs in the SED to better reflect costs of sampling.

### **Comment 14.3**

The DOD requests that "5. Commercial Vessels" be inserted at the beginning of the proposed changes, and recommend that "Commercial Vessels" be defined under the definitions in Appendix I.

### **Response 14.3**

See Response 2.2. Staff does not intend to limit the definition vessel to just commercial vessels since there are other vessels that are owned and operated by public entities. However staff will edit the definition to exclude military vessels.

## **Letter 15: From Joyce Dillard of the General Public**

### **Comment 15.1**

## **APPENDIX D – Staff Response to Comments**

The draft amendment does not address the complexities of the Southern California Bight and the geological and weather effects that affect the quality of the water. To just monitor receiving waters is not addressing those effects of the ocean bottom and the weather, during certain parts of the year, which changes the ocean water along the shore in Santa Monica Bay.

### **Response 15.1**

Staff assumes that the commenter, in using the term “receiving water,” is referring to surface ocean water as opposed to deeper water and sediment. Staff agrees that the ocean, including the Southern California Bight, is complex, and that weather and oceanographic conditions can ultimately affect shoreline water conditions. However, dischargers have limited budgets and resources in order to perform self-monitoring, and the proposed amendment was designed to provide the best information relative to Ocean Plan objectives as can be expected.

### **Comment 15.2**

It is a loophole to allow the requirement for core toxicity monitoring be waived at the discretion of the Regional Water Board if the permittee participates in a regional monitoring program.

### **Response 15.2**

The core monitoring toxicity requirement may be waived for nonpoint source and storm water dischargers if they participate in a regional monitoring program. A regional monitoring program would include monitoring for toxic constituents and toxicity, and would provide a better, more complete depiction of water quality over a larger area than would core monitoring alone.

### **Comment 15.3**

Collaboration needs to occur with those in the field who can interpret the findings.

### **Response 15.3**

The amendment encourages regional monitoring, which by its very nature is collaborative between dischargers and regional monitoring scientific organizations. Often this further results in collaboration with the academic community.

## **Letter 16: From Teresa Jordan of the General Public**

### **Comment 16.1**

Ms. Jordan provided detailed editorial comments to the Draft SED and associated Appendix A, such as correcting page numbers in the Table of Contents, changes to provide format consistency in the document

- Add “.....” and page number to section K and G on Page V, Table of contents, Chapter III, Program of Implementation
- Incorrect page number should be corrected on Page V and page VI, page 52,

## APPENDIX D – Staff Response to Comments

- Underline, indent, or capitalization on page 22, 27, 55.
- Figure numbers should correspond with maps on page 60 -66
- Some non substantive administration changes on page 14, 62, table B and C
- Comment 16.6
- Why was page 32 left blank?

### Response 16.1

Staff appreciates the editorial input, found it helpful, and will use it to edit the document.

### Comment 16.2

Ms. Jordan concurs with the following proposed changes:

- Tables A, B, C, and D to Tables 2, 1, 3 and 4 (respectively).
- “SWRCB” to “State Water Board”
- “RWQCB” to “Regional Water Board”
- “ph” to “pH”
- “MI” to “ml”

### Response 16.2

Staff appreciates the support for these proposed changes.

### Comment 16.3

Captions for Figures VIII-1 through VIII-5 are not on the same page as corresponding maps. The key on Figure VIII-5 is not consistent with the key in the other maps.

### Response 16.3

The captions for Figures VIII-1 through VIII-5 were moved during administrative editing prior to posting. This will be corrected before posting the edited draft SED.

## Letter 17: From Kirsten James and Mark Gold of Heal the Bay

### Comment 17.1

Heal the Bay is supportive of the Vessel Discharge Draft Amendments, however urges the State Water Board to explicitly state there shall be no sewage discharge in State Waters, regardless of the US EPA No Discharge Zone (NDZ) designation.

### Response 17.1

Staff will edit the amendment to state that sewage is also prohibited according state law (Clean Coast Act).

### Comment 17.2

Heal the Bay also supports the State Board providing direction to the regional boards on a model monitoring framework, as this provides a certain level of consistency among monitoring programs and ensures that useful information will be gathered. The state should consider the provisions of SB 72 adopted in 2001 (Water code Section 13383.5), which requires the standardization of storm water monitoring programs.



## APPENDIX D – Staff Response to Comments

### Response 17.2

SB 72 was chaptered as Section 13383.5 of the California Water Code in 2001 and requires the State Water Board to develop minimum monitoring requirements for regulated municipalities that are subject to a storm water permit, and minimum standard monitoring requirements for regulated industries. These monitoring provisions must be included in the storm water permits. The proposed amendment was developed, in part, in response to SB 72.

### Comment 17.3

Heal the Bay also provided many detailed recommendations for improving the amendment. For example they believe that the State Board should broaden the applicability of these requirements to other nonpoint sources, not just limited to agriculture and golf courses. Another specific comment was for indicator bacteria, that the amendments should explicitly state that monitoring should occur for all these indicator bacteria: total coliform, fecal coliform and *Enterococcus*. The Amendments should go further to specify that these samples shall be collected at least on a weekly basis. There were other detailed comments as well.

### Responses 17.3

Staff disagrees that other nonpoint sources should be targeted at this time; staff considers golf courses and agriculture to be the major nonpoint sources with potential for ocean pollution. After we have experience with golf courses and agriculture, further amendments may be considered in the future.

Staff prefers to refer to bacteria monitoring generally as “indicator bacteria” so that if later amendments to the objectives occur, to remove or add indicator bacterial groups, then no changes would be required to the monitoring appendix.

Regarding the frequency of indicator bacteria monitoring for storm water, during the AB411 period (dry season) sampling is required more frequently than once per week (five times per month). During the storm season staff contends that three times per storm season will provide representative results to characterize the runoff impacts.

## Letter 18: From Patrick Sweetland of the North San Mateo County Sanitation District

### Comment 18.1

SWAMP comparable quality assurance is not appropriate for effluent monitoring.

### Response 18.1

Staff agrees. SWAMP comparability is only intended for receiving water and ambient monitoring.

### Comment 18.2

## **APPENDIX D – Staff Response to Comments**

Indicator bacteria monitoring of point sources should remain at the discretion of the regional water boards.

## APPENDIX D – Staff Response to Comments

### **Response 18.2**

Staff disagrees. The proposed amendment is designed to provide consistent statewide monitoring, and leaving this completely to Regional Boards will not result in statewide consistency.

### **Comment 18.3**

Mass discharge monitoring must have a flexible approach.

### **Response 18.3**

Staff believes that the proposed monitoring requirements allow for a flexible approach while still ensuring that the question driven monitoring will better inform the status of marine water quality.

### **Comment 18.4**

Acute and chronic toxicity monitoring requirements should remain the same as the 2009 Ocean Plan.

### **Response 18.4**

The toxicity objectives are not being changed. The proposed amendments provide additional monitoring conditions that are not provided in the Program of Implementation, such as minimum monitoring frequency.

### **Comment 18.5**

Bioaccumulation point source monitoring is unnecessary and benthic community health monitoring is unnecessary as no sediment quality objectives have been adopted.

### **Response 18.5**

The Ocean Plan does have sediment quality objectives. Refer to Response 7.3. It is staff's best professional judgment that bioaccumulation and benthic community monitoring are necessary to assure that the Ocean Plan objectives are being met.

### **Comment 18.6**

It is burdensome for public agencies to greatly increase receiving water monitoring.

### **Response 18.6**

Staff realizes that a cost increase for dischargers will result from the proposed amendment but disagrees that the cost increase is irrational or a reason not to require monitoring of ocean discharges.

### **Comment 18.7**

The proposed change on page 40 creates jurisdictional confusion regarding beach monitoring.

## **APPENDIX D – Staff Response to Comments**

### **Response 18.7**

There should be no jurisdictional confusion regarding beach bacterial monitoring. Dischargers are required to monitor for their effects on water quality, including indicator bacteria.

### **Comment 18.8**

The option for participation in a regional monitoring program must also allow for sufficient time and infrastructure to develop a regional monitoring program over a reasonable period of time.

### **Response 18.8**

Staff agrees with this comment. The monitoring requirements will be implemented through permits, and the period between adoption of the amendment and implementation in the permit will provide sufficient time to develop a regional monitoring program.

## **Letter 19: From Sydney Moe of the Monterey Regional Storm Water Permit Participants Group**

### **Comment 19.1**

The proposed new requirements would burden just the coastal communities with the responsibility and cost of untangling a complex puzzle of potential issues associated with water quality in the ocean. The cost of this research should be spread upon all of the state, which would also provide the state with a mechanism to fund a comprehensive and well coordinated approach.

### **Response 19.1**

It is the responsibility of the discharger, under both state and federal law, to perform self-monitoring. It is not the State's responsibility to fund discharger self-monitoring programs. Please see Responses 11.4, 13.1, and 13.4.

### **Comment 19.2**

There is concern that they are being asked to determine which dischargers, consisting of both public agencies and private entities, are subject to the new requirements and are to come up with an organization for regional monitoring beyond the scope of normal government activities.

### **Response 19.2**

The proposed amendment is clear about which classes of dischargers are required to perform certain monitoring to answer the relevant questions about the status of ocean water quality and Ocean Plan objectives. Regional Monitoring is encouraged and it is staff's experience that regional monitoring efforts in other parts of the state have been successfully carried out by storm water and wastewater dischargers, which were largely municipalities or districts.

## APPENDIX D – Staff Response to Comments

### Comment 19.3

To date, the SWRCB has not presented evidence indicating the need for or the benefits of the proposed monitoring in comparison to the cost imposed on public agencies and private entities in the midst of a recession. As currently written, public agencies and private entities will be required to spend hundreds of thousands of dollars on monitoring that has no proven environmental benefit. Per the Water Code Sections 13241, the State has not provided information regarding the water quality benefits that could reasonably be achieved through the new proposed monitoring. The cost associate with the monitoring required in the proposed amendment is an unfunded State mandate, and well above the limited financial resources of current public agencies and private entities, which do not have a funding mechanism for increased monitoring due to Proposition 218.

### Response 19.3

See Responses 3.3, 8.4, 9.1, and 9.2.

### Comment 19.4

Page 32, Item 3.1.3: The third paragraph states that “low threat facilities or any facility in general, can be relieved on Appendix III monitoring after a reasonable potential analysis demonstrates that the discharge is not likely to cause an excursion of the specific water quality objective”. It is the responsibility of the State to determine the health of the oceans and then, once problem areas are identified, regional monitoring by MS4s in those areas could be considered.

### Response 19.4

Staff disagrees with this comment, as it is the responsibility of the discharger to demonstrate that the discharge is not likely to cause an excursion of the specific water quality objective.

### Comment 19.5

Page 34, item 3.1.6: The environmental impact analysis states that “reasonable foreseeable action that may result if the proposed amendments are adopted would be the collection of monitoring data for those permittees that are found to have reasonable potential.” This requirement is simply imposing expensive monitoring requirements on all Phase I and Phase II agencies, as well as other private entities, to collect data from agencies and entities that have no resources to pay for this monitoring and are struggling themselves during these hard times.

### Response 19.5

Staff disagrees. Discharging is a privilege allowed under an NPDES permit. Under State law, dischargers are required to perform monitoring.

### Comments 19.6

The report states that “the proposed amendments do not specify how each individual permittee must perform monitoring” The proposed amendment does indeed specify exactly how each individual permittee must perform monitoring. Additionally, Alternative

## APPENDIX D – Staff Response to Comments

3 specifically refers to the proposed model monitoring procedures as “new monitoring requirements”. (Requirements are enforceable; guidance is not. The State is trying to bypass the CA Health and Safety Code, Section 57004 by using the word “guidance” instead of “regulations/requirements” to classify the proposed.)

### **Response 19.6**

The monitoring would indeed be required if the amendment is adopted. However, staff has proposed optional approaches, such as regional monitoring, which the dischargers may opt for.

### **Comment 19.7**

Page 38, item 3.1.8: The staff report contends that the proposed amendment is to provide “guidance” to dischargers and “...do not involve adding or altering objectives to the Ocean Plan, nor do they constitute standards....” and therefore do not require a peer review. First, the proposed monitoring amendment is not for guidance, Second, the Ocean Plan is the State’s regulatory document which requires scientific peer review of the scientific basis.

### **Response 19.7**

Staff disagrees with the comment. Peer review is required when targets or objectives are adopted. We are not proposing any new objectives or targets with this amendment. See also, Response 7.2.

### **Comment 19.8**

Page 37, item 3.1.9: The staff report contends that the proposed amendment is not subject to the requirements of Water Code Section 13241 because it doesn’t propose the adoption of new water quality objectives. Since the proposed monitoring requirements are directly related to water quality objectives, they should be subject to an assessment of the economic impacts so that the potential benefit of the additional monitoring can be weighed against the costs associated with performing that additional monitoring.

### **Response 19.8**

Staff disagrees. Water Code Section 13241 requires specific factors to be considered “in establishing water quality objectives,” including economic considerations. The State Water Board is not setting new objectives, therefore Water Code Section 13241 is not applicable. However, staff has included in the draft SED a summary of potential economic impacts.

### **Comment 19.9**

Page 38 (Storm Water Point Sources) second paragraph: What is “dry weather”? How long should it be “dry” to consider it dry weather? Wouldn’t the amount of rain precedent to a dry weather period be germane? What is the definition of “...flow present during dry weather.” Does this mean that the flow needs to make its way all the way to the ocean? Often there are flows during the dry weather but often they do not make it to the ocean via surface flows. As with the ASBS Special Protections, the proposal lacks specificity

## APPENDIX D – Staff Response to Comments

and therefore it isn't possible to know what we are being asked to comment on or how to calculate the costs.

### **Response 19.9**

Staff has edited the amendment to clarify dry weather as a non-storm water discharge and is based on the definition in the ASBS special protections.

### **Comment 19.10**

Pages 38 and 39: The definitions of “Storm Water Point Sources” and “Non-Point Sources” are not clear. Is storm water that sheet flows into the ocean considered to be a “Non-Point Source”? This needs to be clarified prior to being able to analyze all of the impacts of the proposed amendments since these terms are used throughout.

On page 46, Item 4.3, the term “non-point source” is defined. We strongly recommend that language be added to items 4.3 and 4.5 to clarify that only “storm water runoff” from agricultural and golf course land uses are subject to core “non point source” monitoring.

### **Response 19.10**

If a discharger has an NPDES permit, sheet flow is still considered a “storm water point source.” Staff believes that “non-point source” is well clarified in Section 3.3 of the proposed Appendix III.

### **Comment 19.11**

Page 38, Item 3.1.10: This paragraph states in part that all MS4 dischargers must monitor for aquatic toxicity and chemical constituents once per year from a minimum of 10% of outfalls greater than 36” in diameter. This testing will be expensive, and appears intended to only apply to entities with numerous outfalls greater than 36”. Clarifying language should be added to this paragraph stating that the 10% figure is to be rounded to the nearest whole number and that if an entity has less than five outfalls greater than 36” in diameter, it will not be required to perform this additional monitoring.

### **Response 19.11**

Staff has edited the amendment to clarify that dischargers with five outfalls or less which are greater than 36 inches in diameter or width would be required to monitor each outfall once per permit cycle.

### **Comment 19.12**

Page 40, Item 3.1.11: The staff report refers to some of the Ocean Plan tables as Tables A and B, while the Ocean Plan itself appears to refer to these tables as Tables 1 and 2. The correct references to these tables should be used throughout.

### **Response 19.12**

Staff believes that the staff report should refer to the Ocean Plan tables by their currently accepted names, and should refer to the tables by their proposed names in the proposed amendment language.

## APPENDIX D – Staff Response to Comments

### Comment 19.13

Page 44, Item 3.1.11: This paragraph of the proposed amendment describes “Special Studies” to include “research questions” and states that special studies are to be carried out by monitoring that is to be performed in part by storm water dischargers. The Water Board does not have the authority to require municipalities to conduct research on the State’s water quality issues, so this requirement should be removed.

### Response 9.13

Discharger self-monitoring is required by law, and the State Water Board has authority to establish monitoring requirements for any person who discharges to navigable waters. See, Water Code section 13383. The Regional Water Boards may also require special studies, where they see the need.

### Comment 19.14

Page 46, Item 4.2 Storm Water, question #6: This should be reworded to make it clearer. We believe what is meant is: What is the relative load contribution of indicator bacteria to the receiving water from storm water runoff?

There is a term “ankle depth, point zero” in this section. Presumably ankle depth refers to the depths at which the sample is to be taken, and point zero means directly opposite the point of discharge of the outfall, but these terms should be clarified to ensure this is the regulatory intent.

### Response 19.14

Staff agrees that the commenter’s rewording of question #6 (now question #4) is clearer and has changed the proposed language accordingly.

### Comment 19.15

Page 46, Items 4.2.a and 4.2.b: How is wet weather defined? As with the draft ASBS Special Protections, a clear definition of this term is vital to understanding what will be required.

### Response 19.15

See Response 19.9.

### Comment 19.16

Page 46, Item 4.3: The first question to be answered is one that the state should be answering rather than presuming guilt on the part of the MS4s. This is a much broader question than one related just to storm water since there are numerous sources of pollutants entering the oceans. Questions 4 and 5 are questions that are not appropriate for many small MS4s to research. Bacteria are common place in the oceans and in storm drains. The presence or absence is often not an indicator of a poorly operating storm drain system. In fact, it can be the sign that there is an abundance of wildlife in the area, as many sources of bacteria are natural such as sea lions, sea gulls, and other marine wildlife.



## APPENDIX D – Staff Response to Comments

In the paragraph directly below the six questions is the first time that storm water is now brought in as a non-point source. This then begs the question of whether, throughout the proposed amendments, storm water sheet flow is to be included under all of the references to non-point sources? On page 39 under the definition of non-point sources, there is a somewhat confusing reference to "...urban not covered under an NPDES permit..." which we were presuming meant urban runoff not covered under an NPDES permit. If this is what is meant, then this is tantamount to saying that even if there aren't storm drains near an AB 411 beach, if there is sheet flow, which many beaches will have, they will also be subject to monitoring. If this is the intent of this amendment, it should be stated more overtly.

### **Response 19.16**

Staff believes that question #4 (now #3) can easily be answered through periodic monitoring. Staff agrees that question #5 (now removed) is best answered through a regional monitoring approach rather than through individual core monitoring. Regarding sheet flow, please refer to Response 19.10.

### **Comment 19.17**

Page 47, Item 5.2: As with other sections of the proposed amendments the questions being asked here demonstrate that the State lacks the basic information to answer these questions. Question # 3 is especially illustrative of the "guilty before proven innocent" approach. It appears that the state is implying that there are problems in the receiving waters throughout the State, yet also implied is that the State doesn't know for sure or to what extent, so the MS4s are now being required to spend scarce resources trying to answer what are unanswerable questions on a micro level. How would the MS4s even start to approach such an open ended question? Certainly, chemical pollution exists and its sources are worldwide. These are questions that should be answered in a much broader context rather than by individual dischargers or regional monitoring efforts. These sorts of questions are very similar to questions about air pollution and the global climate. Research into global warming or air pollution isn't being done by hundreds of municipalities each striking out on their own.

### **Response 19.17**

Staff disagrees. Under State law, dischargers are required to perform monitoring.

### **Comment 19.18**

Page 48, Item 5.3: This section addresses non-point sources. As in Section 4.3, it appears that the definition of non-point sources includes storm water. If this is the case, how can one gather samples from sheet flows as required in this section? Spatially, how frequently will samples need to be taken? There is a reference to tailwater flows from agricultural areas. Tailwater is stream flow and not a non-point source. So is the idea to sample only where the sheet flow is concentrated into essentially a point source? It is not clear what we will be required to perform and therefore it is difficult to provide salient comments.

## APPENDIX D – Staff Response to Comments

### Response 19.18

Staff disagrees. In the Clean Water Act, irrigated agriculture return flows are specifically referred to as a non-point source. Regarding sheet flows, please refer to Response 19.10.

### Comment 19.19

Page 48, Item 6.0: Although for the purposes of this particular section sediment monitoring does not appear to apply to storm water dischargers. The term “natural conditions” in item 1 should be described/defined, as it may ultimately have application to all of the discharges regulated under the proposed amendment.

### Response 19.19

Staff disagrees. The Ocean Plan has narrative objectives for sediment quality. These objectives must be met in the receiving water regardless of which type of discharge is involved, including storm water discharges. The Ocean Plan already has a definition of the term significant as it relates to statistical differences between natural conditions and those impacted by discharges.

### Comment 19.20

Page 49, Item 7.2: Question #1 should be reworded to ask if the receiving water is not meeting Ocean Plan standards as a result of storm water discharges. Question #3 should also be reworded to ask: What is the relative contribution of storm water pollutants to the receiving water toxicity?

The water quality of the storm water runoff itself need not meet the receiving water standards because an initial dilution factor should be applied to those discharges, just as it is applied to wastewater treatment plant discharges. What is the basis for the State’s assumption (implicit in the language of this question) that there is a receiving water toxicity problem (with regard to storm water discharges)? Further, if a receiving water toxicity problem were to be identified, it would be very costly to determine whether storm water discharges were significantly contributing to that problem. This illustrates another example of the need for peer review.

### Response 19.20

Question #1 was reworded to ask if runoff meets objectives for toxicity in the receiving water. Question #3 already asks what the relative runoff contribution to the receiving water toxicity is. However, some questions were changed or removed from the amendment. Staff disagrees that a dilution factor should be applied to receiving water of storm water runoff. A dilution factor is applied to waste water discharges and not storm water discharges, as stated in the Ocean Plan. Staff has proposed that storm water monitoring be of receiving water, and therefore the effluent would be diluted by ocean water when monitored.

### Comment 19.21

Page 51, Item 10: When addressing characteristics such as turbidity, it’s important and relevant to ask: What would have been the level of turbidity if there was no

## APPENDIX D – Staff Response to Comments

development? Creeks located in pristine areas become muddy during high flows. How is this base level of temporary water quality deterioration taken into account?

### **Response 19.21**

The Ocean Plan deals with this issue by comparing it to “natural conditions.” The Ocean Plan already has a definition of the term significant as it relates to statistical differences between natural conditions and those impacted by discharges.

## **Letter 20: From James Colston of the Orange County Sanitation District**

### **Comment 20.1**

Regarding SWAMP comparability, the District recommends a clarification to exclude certain measurements that are lower priority for development of QA guidelines.

### **Response 20.1**

Since the adoption of the amendment would be a discrete date in the future, and since efforts are on-going to develop SWAMP QA for the “priority 3” measurements (e.g. fish and benthic invertebrates), staff prefers to keep the language in the amendment to generally refer to SWAMP comparability. Staff is confident that the “priority 3” measurement SWAMP QA will be determined as it is currently the subject of a SCCWRP project.

### **Comment 20.2**

The sampling frequency and sampling locations (offshore REC-1 waters or surf zone, or both) for bacteria indicators should be clarified.

### **Response 20.2**

Staff agrees that this section could be better clarified. The intent is for sampling to occur at a minimum in REC-1 waters in the surf zone. The amendment has been edited to clarify that sampling should take place at the shoreline. Regional Boards may require offshore sampling at their discretion. The sampling frequency was originally stated at five times per month, but has since been edited to a frequency of weekly monitoring.

### **Comment 20.3**

It is recommended to change “water column” to sediment chemistry since the water column is not monitored for the constituents mentioned in the supporting language in Appendix III 6.1.

### **Response 20.3**

Staff agrees and has changed section 6 of Appendix III from “Water Column” to “Sediment Monitoring.”

## APPENDIX D – Staff Response to Comments

### Comment 20.4

Clarify in the first paragraph of Appendix III 7.1: “Core monitoring for Table 1 receiving water toxicity shall be required periodically”. If routine whole effluent toxicity (WET) tests are also being performed and demonstrate that effluent is not toxic, water column toxicity testing should not be required. If this implies monitoring for receiving water, it should be clarified when such testing would be necessary (e.g. when routine WET tests exceed permitted limits).

### Response 20.4

The following sentences in the paragraph clarify the first sentence, with specific monitoring for specific sized discharges. Staff has made changes to the amendment in Section 7.1 to clarify that WET testing is required for waste water and not for receiving water.

### Comment 20.5

In section 7.1, clarify: “Core monitoring for acute sediment toxicity will utilize alternative amphipod species”. It is unclear if sediment toxicity testing is a proposed requirement.

### Response 20.5

Staff has added clarification to this paragraph by requiring that monitoring utilize a minimum of one invertebrate species at critical life stage.

### Comment 20.6

Language in Appendix III, section 2 should be clarified to exclude components listed as priority 3 since there are currently no SWAMP measurement quality objectives (MQOs) that can be followed.

### Response 20.6

Section 2 of the Appendix III amendment has been edited to clarify that “for measurements that do not have SWAMP MQOs available, then MQOs shall be at the discretion of the Regional Water Board.” MQO’s for SWAMP comparability in Marine waters can be found at the Water Board’s webpage Ocean Standards at [http://waterboards.ca.gov/water\\_issues/programs/ocean/#model](http://waterboards.ca.gov/water_issues/programs/ocean/#model)

## Letter 21: From John Berge of the Pacific Merchant Shipping Association (PMSA)

### Comment 21.1

PMSA requested that their previous comments be incorporated into the record.

### Response 21.1

Staff cannot determine which comments or concerns raised during the development of other statutes and regulations, or in other proceedings, but not specifically identified in comments on the current draft proposal, are considered relevant and material to the proposed action. Nor can staff determine whether any issues previously raised have or

## **APPENDIX D – Staff Response to Comments**

have not been adequately satisfied through the procedures associated with development of those statutes, regulations or other proceedings. Without specific information and explanation, staff does not have a fair opportunity to address these issues.

### **Comment 21.2**

The vessel discharge amendment as currently drafted would create a separate and unique requirement not specified or referenced in the respective international, federal and state laws and regulations. PMSA recommends the section of the draft amendment on vessel discharges that states "Vessel discharges must not result in violations of water quality objectives in this plan" be changed to "Vessel discharges must not result in violations of State, Federal or International laws."

### **Response 21.2**

Staff does not agree. The Ocean Plan is a federally enforceable water quality control plan with water quality standards. The federally enforceable standards are composed of beneficial uses and objectives. The objectives must be met in order for water quality to be maintained. Furthermore, the State has an anti-degradation policy (Resolution 68-16), which requires that existing high quality waters be maintained to the maximum extent possible. This is accomplished by meeting water quality objectives.

## **Letter 22: From Philip Friess of the Sanitation Districts of Los Angeles County**

### **Comment 22.1**

The District strongly supports the model monitoring amendments. They have used this framework as the basis for their Joint Water Pollution Control Plan (permit since 2006) and found the resulting program to be more efficient and adaptive to the specific environmental issues that are regionally important. Most reductions in core monitoring were replaced with more relevant regional monitoring. The process allows for a more effective use of monitoring resources and addresses greatly valued current environmental concerns.

### **Response 22.1**

Staff appreciates the support and input on the effectiveness of regional monitoring. Staff agrees that regional monitoring is a more effective approach to monitoring and has made the effort to design the proposed amendment to encourage participation in regional monitoring programs.

### **Comment 22.2**

Language regarding the use of specific methods and guidance documents should be deleted or modified from "shall use" to "may use as guidance" until specific procedures that are consistent with SWAMP data quality objectives can be developed.

## **APPENDIX D – Staff Response to Comments**

### **Response 22.2**

Staff disagrees. Draft SWAMP comparability has been determined, primarily with input from Los Angeles County Sanitary and other stakeholders, for priority measurements and will be finalized before the amendment is adopted. The SWAMP QA for remaining measurements (e.g., fish and benthic invertebrates) are being determined similarly in a SCCWRP project with collaboration with the SWAMP program. Staff expects this to be completed in the near future, albeit after the proposed adoption of the amendment. However, the amendment will need to be implemented through permits, and adoption of those permits will likely provide enough time for the SCCWRP project to be completed.

### **Comment 22.3**

Page 31, Section 3.1.1: First paragraph should read “Standard Core Ambient water Monitoring and Reporting Requirements”.

### **Response 22.3**

Staff does not agree that the amendment should be retitled to include “core ambient”, because it also includes a regional monitoring framework as well.

### **Comment 22.4**

Page 32, Section 3.1.2: This should clearly focus all these requirements on RW monitoring in contrast to effluent monitoring.

### **Response 22.4**

Staff agrees that storm water monitoring should be conducted for receiving water rather than for effluent and has updated the amendment accordingly.

### **Comment 22.5**

Page 34, Section 3.1.6: Third bullet under Subtidal Soft Bottom would be better worded as “Invertebrate and fish assemblage by trawl and infaunal community composition from benthic grab.”

### **Response 22.5**

Staff agrees and has amended the draft SED accordingly.

### **Comment 22.6**

Page 36, Paragraph 2: All references to “National Sanctuaries” should be replaced with “National Marine Sanctuaries.”

### **Response 22.6**

Staff agrees and has made changes accordingly.

### **Comment 22.7**

Page 44, Section 2, Quality Assurance: The first sentence should be clarified by adding the phrase “receiving water” such that it reads, “All receiving water monitoring conducted in compliance with MRPs...”

## APPENDIX D – Staff Response to Comments

### **Response 22.7**

The SWAMP comparability requirement has now been clarified to apply only to receiving water and ambient water.

### **Comment 22.8**

Page 46, Section 4.2 and 4.3: Clarify how question #5 is addressed with the proposed core monitoring.

### **Response 22.8**

Staff agrees that this question would not be adequately answered through individual core monitoring, but believes that it may be answered through regional monitoring. Staff has made changes to the amendment to reflect this.

### **Comment 22.9**

Page 47, Section 5.1: Clarification is needed as to where monitoring should be conducted – in receiving water or the effluent. It is recommended that “in the effluent” be added to the first sentence.

### **Response 22.9**

Staff agrees that this clarification in language would be useful and has updated the amendment with the suggested language accordingly.

### **Comment 22.10**

Page 47, Section 5.2 and Page 48, Section 5.3: Clarify how question #5 is addressed with the proposed core monitoring.

### **Response 22.10**

Staff agrees that this question is not adequately answered through individual core monitoring, but believes that it may be answered through regional monitoring. Staff has made changes to the amendment to reflect this.

### **Comment 22.11**

Page 48, Section 6: The wording of these questions does not seem consistent with the core monitoring questions of the MMP as they are specific to chemical contamination and independent of benthic community condition. The MMP uses both chemical data and benthic community data to assess impact and the same should be true for this amendment. If the sediment contamination monitoring remains separate from the benthic community monitoring in this amendment, the monitoring questions should be revised to only provide spatial and temporal trends in sediment contamination and to assess the significance of sediment contamination in the condition of the benthic, trawl, and bioaccumulation monitoring results. An example of this is in the approved NPDES Permit for the JWPCP (page E-34)



## APPENDIX D – Staff Response to Comments

### Response 22.11

The questions are derived directly from the Ocean Plan narrative objectives. The amendments would require chemical and biological monitoring, and the resulting information from this would be applicable to those questions.

### Comment 22.12

Page 49, Section 7.1: In response to the question “Does the effluent meet permit effluent limits for toxicity...”, it is recommended that the first sentence of this section be changed from “Core monitoring for Table 1 receiving water toxicity...” to “Core monitoring for Table 1 effluent toxicity...”

### Response 22.12

Staff agrees. The amendment has been changed to require effluent toxicity monitoring.

### Comment 22.13

Page 49, Section 7.1 and Page 50, Section 7.3: The last sentence is unclear about what using an alternative species means and needs to be clarified.

### Response 22.13

Staff agrees that the language was not clear and has made changes to clarify that at least one invertebrate species at critical life stage be used.

### Comment 22.14

Page 50, Section 7.3: Replace “water quality” with “toxicity” in question #1; replace “Are the conditions” with “Is toxicity” in question #2; replace “pollutants loading in receiving water” with “receiving water toxicity” in question #3; and delete question #5 as it is redundant with question #3.

### Response 22.14

Staff agrees that clarification is needed for the questions in section 7 (aquatic life toxicity) and has edited the amendment accordingly. Staff has also removed question #5 from section 7.3.

### Comment 22.15

Page 50, Sections 8.1 and 9.1: Should the questions addressed by this monitoring also include a temporal trend component?

### Response 22.15

The questions do not specifically require a temporal trend, however monitoring on a regular basis, at least once per permit cycle, would allow the development of a time series data set. In addition, a regional monitoring approach could formally include the temporal trend component if desired by the participants.

### Comment 22.16

Page 51, Section 9.1 and 9.2: It would be more appropriate to make analysis of Table 1 metals for bioaccumulation to a minimum requirement of only metals with a potential to



## APPENDIX D – Staff Response to Comments

bioaccumulate and leave the inclusion of other metals to the discretion of the Regional Boards.

### **Response 22.16**

The Table 1 metals are capable of being bioaccumulated in bivalve tissue. These metals have been included in both state and national mussel watch.

### **Comment 22.17**

Page 51, Section 10, item 3: The 2005 Ocean Plan includes “as a result of the discharge of oxygen demanding waste materials” which clarifies the intent of the objective and should be reinstated into this version.

### **Response 22.17**

Staff agrees and is changing the question as requested.

### **Comment 22.18**

Page 52, Section 10.1 The requirement to monitor “desalination brine” is only appropriate for point sources discharging ocean desalination brine that has a higher salinity than the ocean water. It is not appropriate for the discharge of brines from desalination of recycled water or brackish groundwater, as these brines have salinity lower than ocean water. It is recommended to change the language to “Salinity must also be monitored by all point source discharging hypersaline ocean water desalination brine...”

### **Response 22.18**

The amendment has been changed to include the term “hypersaline.”

### **Comment 22.19**

Page 52, Section 11: The fourth paragraph of this section states that all sample dilutions for bacterial analyses range from 2 to 16,000. In contrast, our JWPCP permit states that dilutions are to be performed so that the expected range of values is bracketed, with 2 to 16,000 per 100mL for total and fecal coliform and 1 to 1,000 per 100mL for enterococcus. Should this be clarified or standardized?

### **Response 22.19**

Staff agrees and will make the change to include the 1 to 1,000 bracket for enterococcus.

### **Comment 22.20**

Page 53, Section 11: The sixth paragraph of this section specifies use of EPA 600/4-85/076, which is an old method. The Districts’ lab uses the current online version of the Standard Methods, and uses membrane filtration. Many locations use Indextx for E. coli, which is not a membrane filtration method. Perhaps this should refer to Table 1A in the 40 CFR Part 136 and other EPA approved methods.

## **APPENDIX D – Staff Response to Comments**

### **Response 22.20**

Staff agrees that new methodology could be used. Significant advances are being made in the development of rapid indicators test and they are closer to general commercial application. EPA is expecting to approve new methods, such as qPCR.

### **Comment 22.21**

Page 53, fifth paragraph: The requirement for benthic sediments monitoring to conform to the referenced document used for freshwater monitoring is not appropriate. Suggest the language regarding the use of this document be deleted or at least modified from “shall use” to “may use as guidance” until ocean specific procedures can be developed that are consistent with SWAMP data quality objectives.

### **Response 22.21**

Measurement Quality Objectives (MQO's) for SWAMP comparability in marine water have been developed for marine sediments and sediment toxicity.

### **Comment 22.22**

Page 53, sixth paragraph: The requirement for bioaccumulation monitoring to conform to the referenced document is possibly outdated as there is more current guidance from EPA available (Guidance for Assessing Chemical Contaminant Data for Use in Fish Advisories, November 2000, EPA 823-B-00-007). Suggest the language regarding the use of this document be deleted and replaced with the more recent guidance. Further the use of the document be modified from “shall use” to “should use as guidance” so other methods can be considered for use if appropriate.

### **Response 22.22**

Staff agrees to use the latest version approved by EPA. Modification in this paragraph will be done

## **Letter 23: From Brennon Flahive of the South Orange County Wastewater Authority (SOCWA)**

### **Comment 23.1**

Regarding Model Monitoring, SOCWA agrees with the concept of increasing regional monitoring programs but is concerned with infinitely open-ended questions.

### **Response 23.1**

Staff appreciates SOCWA's support of the regional monitoring approach. Staff understands the concern about “open-ended questions” but contends that the intent and requirements of the amendment will assure that only relevant questions related to Ocean Plan objectives will require monitoring, and that monitoring should be limited and specific to those questions.

## **APPENDIX D – Staff Response to Comments**

### **Comment 23.2**

The requirements should focus on monitoring discharge impacts and not plume analysis for the sake of plume analysis with no defined purpose. SOCWA is concerned that question driven monitoring will lead to drastic increases in water quality monitoring costs without assurance that questions will be answered. These proposed Model Monitoring Program provisions will result in drastic increases in spending for ocean discharge monitoring without providing any mechanism for cost oversight or a means of ensuring that the additional monitoring results in greater protection of water quality or beneficial uses.

### **Response 23.2**

Staff disagrees that the receiving water characteristics monitoring is monitoring for monitoring sake. Instead it is intended to answer questions about the narrative objectives in the Ocean Plan. Furthermore it provides flexibility, such as “if sufficient data exists from previous water column monitoring for these parameters, the Regional Water Board, at its discretion, may reduce the frequency of water column monitoring, or may allow this requirement to be satisfied through participation in a regional monitoring program.” Staff also disagrees that the amendment will result in “drastic increases in spending” without providing greater protection. First, while those agencies not currently conducting plume monitoring will experience a cost increase, that cost is comparable to the costs of other agencies currently conducting that monitoring, and is certainly not “drastic.” Second, without that plume monitoring it is impossible to determine if water quality is protected.

### **Comment 23.3**

SOCWA is concerned that routine monitoring may trigger notification to MPA Managers.

### **Response 23.3**

Monitoring results are public records and would be available to all including the Departments of Fish and Game and Parks and Recreation. In fact, staff intends to collaborate with the MPA monitoring programs in order to better leverage both the regional water quality monitoring programs and the MPA monitoring programs. However, this should not be a concern for SOCWA, because staff is also working on another proposed amendment to the Ocean Plan to address, among other things, existing wastewater discharges and MPAs. In general, that amendment would not trigger any changes to existing wastewater outfalls as long as Ocean Plan objectives are met.

### **Comment 23.4**

Reference to the Aliso Water Management Agency, Aliso Ocean Outfall on pages 65 & 66 should be changed to the South Orange County Wastewater Authority, Aliso Creek Ocean Outfall and the South Orange County Wastewater Authority, San Juan Creek Ocean Outfall.

### **Response 23.4**

Staff appreciates this clarification and will update the maps accordingly.

## APPENDIX D – Staff Response to Comments

### Letter 24: From William Douros of the U.S Department of Commerce

#### Comment 24.1

The Department supports the inclusion of all aspects of the vessel discharge prohibitions and implementation provisions as described in Section II.I.5 and II.K.

#### Response 24.1

Staff appreciates the Department's support of the proposed vessel discharge amendment.

#### Comment 24.2

The definition of "Large Passenger Vessels" should be revised to address "condominium ships."

#### Response 24.2

Staff will provide an expanded definition of "Large Passenger Vessels" to address "condominium ships."

#### Comment 24.3

A definition for "oily bilge water" should be included.

#### Response 24.3

Staff agrees that a definition for "oily bilge water" should be included and has edited the amendment to include a definition.

#### Comment 24.4

The Department is supportive of the question-driven model monitoring proposal.

#### Response 24.4

Staff appreciates the Department's support of the proposed model monitoring amendment.

#### Comment 24.5

Details should be given to explain the graywater discharge regulation.

#### Response 24.5

Staff has revised the draft amendment to state that vessels subject to the VGP which are not large passenger vessels must follow the best management practices for gray water as required in the VGP, including the use of only those cleaning agents (e.g., soaps and detergents) that are phosphate-free, non-toxic, and non-bioaccumulative.

#### Comment 24.6

In Section II.I.5.d, please clarify the type of vessels to which this applies.

## APPENDIX D – Staff Response to Comments

### Response 24.6

The discharge of sewage and sewage sludge is prohibited from all ocean going vessels equal to or greater than 300 gross tons, and large passenger vessels.

### Comment 24.7

The Department recommends monitoring requirements be consistent across the Ocean Plan, ASBS and MS4s.

### Response 24.7

MS4 NPDES permits are the regulatory vehicles by which the Ocean Plan and these proposed amendments would be implemented. The Ocean Plan already regulates ASBS. Waste discharges are prohibited in ASBS unless an exception is granted. Many ASBS dischargers are now covered by an exception from the Ocean Plan with stricter monitoring than what is proposed in this amendment for non-ASBS discharges. Nevertheless, both ASBS and non-ASBS ocean monitoring may be collaborated through a regional monitoring program. MS4 permits will implement both non-ASBS and ASBS monitoring programs, including regional monitoring. The staff of the State and Regional Water Boards will be involved with these programs.

### Comment 24.8

The State Water Board should put more reliance on the surface water ambient monitoring program and the water quality monitoring council.

### Response 24.8

The State Water Board strongly supports its SWAMP program as well as our involvement with the Water Quality Monitoring Council. However, the discharger self-monitoring programs are our primary means of determining compliance with water quality standards in relation to waste discharges. The amendment will provide a consistent question driven approach for discharger self-monitoring while assuring that the results will be SWAMP comparable. Also please see Response 11.4.

## Comment Letters Received by noon on August 31, 2012

Letter No.	Association	Representative
25	City of San Diego	Kris McFadden
26	General Public	General Public

### Letter 25: From Kris McFadden of the City of San Diego

#### Comment 25.1

## APPENDIX D – Staff Response to Comments

“The shift toward receiving water monitoring for nearly all model monitoring requirements is greatly appreciated. The City feels this shift will provide accurate and valuable data with respect to impacts on the ocean receiving water from runoff. Additionally, this approach will allow the City to focus resources on determining ocean impacts, and efficiently use of resources assessing ocean water quality after mixing. This approach is in-line with the City’s position on effective use of monitoring resources to address specific questions.”

### **Response 25.1**

Staff appreciates the comment and support.

### **Comment 25.2**

Regarding Table 2 of the draft SED: “Although these estimates more closely reflect true costs, these estimates still seem low with respect to costs that include both sample collection and analysis... These costs are reflective of approximate analytical costs, and do not appear to include time for labor and vehicle usage. This suggests that costs will be greater than currently estimated. This difference in costs would have a significant increase, causing financial impacts to the City. We recommend documenting the basis of the costs estimated in the response to comments to determine if all factors were included in developing the cost estimate.”

### **Response 25.2**

Staff utilized available data from monitoring currently conducted in California and worked with the Southern California Coastal Water Research Project to determine a more accurate cost estimate than originally presented in the first draft of the SED. Staff is confident that the cost estimates in the SED now are representative and adequate. Presently, very little monitoring of storm water and non-point sources is conducted for ocean discharges in California, and this is the reason there is a large increase in monitoring costs as a result of the proposed monitoring requirements. Staff believes that monitoring is necessary to ensure the preservation of California’s ocean water beneficial uses.

### **Comment 25.3**

The City requests a written response from the State to comments made during the previous comment period in order to understand the nature of incorporations or exclusions of the City’s comments in the current document.

### **Response 25.3**

Staff has addressed the City’s comments from the previous comment period. Please see Responses 8.1 – 8.4.

### **Comment 25.4**

The City recommends a longer time frame between publication of revisions, public workshop and comment letter due dates. This would allow for comment letters to address the most current issues discussed at the workshop thereby providing the State

## **APPENDIX D – Staff Response to Comments**

Board with the most thoughtful and insightful comments based on the State Board Staff's presentations.

### **Response 25.4**

The State Water Board has complied with all applicable public noticing and public planning process requirements. These amendments have been under development since 2006, with ample time and opportunity for the public to review and make comments on the proposed amendment. Staff appreciates all of the numerous public comments received throughout that process.

## **Letter 26: From Joyce Dillard of the General Public**

### **Comment 26.1**

Regarding section 2.6.2 Environmental Baseline: "The use of Santa Monica Bay as the criteria for the rest of the State is criminal. There are so many problems with fraudulent representation of Commissions, compromise of data, conflicts of interests and non-contractual arrangements that Santa Monica Bay is not a reliable source. It is certainly unfair to the rest of the State that does not have the same geology (or much else in common) to be under the gun of a mismanaged area."

### **Response 26.1**

As stated in the draft SED document, section 3.1.10, staff utilized information regarding the size and quantity of storm water drains at Santa Monica Bay to get an estimate of the number of storm drains exceeding 36" in width or diameter along a measured length of urban coastline. This number was extrapolated to get an estimate of the number of storm drains along the entire California coastline. The reputation of the entities using the storm drain systems is not relevant to the data regarding the number of storm drains.

### **Comment 26.2**

Regarding Senate Bill 72 which states that the State Water Board "shall develop minimum monitoring requirements for each regulated municipality and minimum standard monitoring requirements for regulated industries." The commenter asks: "Just what industries are you addressing. We see golf courses but not cemeteries. This is weak and needs to be expanded into realistic source point pollutant identification and mitigation."

### **Response 26.2**

SB 72, codified in Water Code section 13383.5, is relevant to municipal and industrial storm water discharges. Any industrial facility covered by the Industrial General Storm Water Permit that discharges to the ocean would require monitoring under the amendment. Furthermore, regarding nonpoint sources not covered by a storm water NPDES permit, staff recognizes that there are non-point sources other than golf courses and agricultural lands, but has chosen to initially prioritize these two types of non-point sources in this proposed amendment (section 3.1.10 of the SED). This was determined



## APPENDIX D – Staff Response to Comments

due to the the relatively significant contribution of runoff to the ocean from golf courses and agriculture along California’s coastline.

### **Comment 26.3**

Regarding proposed indicator bacteria monitoring requirements: “The ‘regional monitoring program’ is too loose a description. Will it involve regulated public health regulations. So far, in Los Angeles County, we have seen insider guided, non-governing body approved “guidelines”. It may look regional, but it is custom designed to avoid proper oversight and real regulation. Where is the State Department of Public Health in this process.”

### **Response 26.3**

As stated in the draft SED document, section 3.1.12, core monitoring of indicator bacteria may only be suspended if the permittee participates in a regional monitoring program, in conjunction with local health organization(s), and at the discretion of the Regional Water Board. The Regional Water Board will provide proper oversight and ensure appropriate regulation. In addition, On October 8, 2011, Governor Brown signed Senate Bill 482 (Chapter 592 of 2011) transferring authority over water quality monitoring at beaches from the Department of Public Health to the State Water Board. In this capacity, the State Water Board will be working with the Regional Water Boards and the local health agencies to assure any beach monitoring will be performed to provide quality information that will be used to protect public health.